

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3216 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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AHMEDABAD MUNICIPAL CORPN

Versus

KHERATIMAL R VARMA & ORS.

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Appearance:

MR SN SHELAT for Petitioner

MR KS ACHARYA for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 12/07/96

#### ORAL JUDGMENT

Heard learned counsel for the parties. Challenge is made by the petitioner in this Special Civil Application to the order of the Labour Court, Ahmedabad in Recovery Application No.3893 of 1977 decided on 15th October 1980.

2. The main contention of the learned counsel for the petitioner, Shri S.N. Shelat is that the Tribunal has no jurisdiction to pass the order of the nature which has been made u/s.33C(2) of the Industrial Disputes Act,

1947 (hereinafter referred to as the 'Act 1947'). Proceedings u/s.33C(2) of the Act 1947 are in the nature of execution and not substantive proceedings. On the other hand, Shri K.S. Acharya, learned counsel for the respondents contended that the respondents preferred the claim before the Labour Court for benefits under the Award and application u/s.33C(2) has been made for computation of benefits.

3. It is not necessary to go on the merits of the case as the learned counsel for the parties passed a Purshis and prayed therein that this Special Civil Application may be disposed of as per the agreement made in between the parties. I have gone through the Purshis passed by the counsel for the parties. The impugned order of Labour Court does not give out that the benefits have been computed on the basis of some award. In view of this fact, the contention of the counsel for the petitioner has merits, but at the same time the respondents cannot be deprived of the benefits in case they have claimed the same on the basis of some Award. Interest of justice will be served in case the matter is decided in terms of agreement as arrived at between the parties. In the result, this Special Civil Application succeeds and the same is allowed. The order of the Labour Court, Ahmedabad, in Recovery Application No.3893 of 1977 dated 15th October 1980 is set aside. The matter is remitted back to the Labour Court, Ahmedabad, as regards the claim made by respondents-workmen that they are entitled to benefits on the basis of I.G. Thakore award Part III for Light and Power Plant Department. It shall be open to the respondents-workmen to file additional statement of claim for their entitlement to be placed in the grade of 260-430 on the basis of I.G. Thakore Award. The petitioner herein can also raise all the contentions disputing such claims as also regarding maintainability of such claims in the recovery application. The Labour Court, Ahmedabad, shall decide the matter after giving opportunity to both the parties to lead evidence and opportunity of hearing. The respondents-workmen are paid by the Ahmedabad Municipal Corporation 50% of the amount under the impugned order on assurance and undertaking given by them to this Court to return the same if the order is set aside. So far as this aspect is concerned, since this matter is ordered to be remitted back to the Labour Court, the parties shall abide by the decision given by the Labour Court on remand. It is expected that looking to the fact that this matter is old one, the Labour Court may decide the same within a reasonable time, say three months from the date of receipt of certified copy of this order. Rule is

made absolute in aforesaid terms with no order as to costs.

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(sunil)